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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,932	07/03/2003	Klaus Abraham-Fuchs	32860-000543/US	3965

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EXAMINER

CRABTREE, JOSHUA DAVID

ART UNIT	PAPER NUMBER
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3715

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/611,932	ABRAHAM-FUCHS ET AL.	
	Examiner	Art Unit	
	Joshua D. Crabtree	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/3/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Specifically, on page 7 of the oath, the residence has been altered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, 7, 9, 13, 19, 20, 22, 28, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Goknar (US 6,120,440). Goknar discloses a diagnostic method.

With regard to claims 1 and 13, and the limitation of providing a capability profile for a patient, Goknar discloses providing a psychiatric profile for a patient (Col. 3: 9-11) With regard to the limitation of providing a first database, said first database

containing a plurality of past comparative capability profiles for comparative patients and an allocation of training programs respectively prescribed based on the comparative capability, wherein a data processing station automatically compares the patient's capability profile with the comparative capability profiles and selects and displays from the first database, at least one suitable training program for which the associated comparative capability profile matches the patient's capability profile to a prescribable degree of similarity, Goknar discloses that the data from a previous patient may be retrieved and compared against the data of the current patient (Fig. 1A, Col. 3: 24-26). Goknar also discloses matching the evaluated data with treatment plan options stored in the computer memory to select a treatment plan for the patient (Col. 2: 61-63). Goknar also discloses that the evaluated data may then be compared against known treatments for similar data profiles and a treatment is selected for the patient and displayed (Col. 9: 13-16).

With regard to claims 6 and 19, Goknar discloses that the system requires that the user, with or without the aid of the computer, total the data to produce an overall score, calculate mean scores, and display the results in graphic form. Goknar discloses that the computer will perform the calculations according to algorithms, and select a treatment option or options most nearly fitting the psychological profile of the patient (Col. 3: 63-75).

With regard to claims 7 and 20, Goknar discloses that the user may artificially alter numeric data of a patient in order to view possible scenarios in which the

condition of the patient severely deteriorates (Col. 9: 30-40; see also Fig. 1, step 123). Thus, Goknar discloses a way in which the user may modify the treatment program. Goknar also discloses that the practitioner can modify the treatment program by adding comments as well (Col. 4: 26-28).

With regard to claims 9 and 22, Goknar discloses input of data into a data processing station. (Col. 5: 40-60). With regard to the limitation of an electronic patient record, Goknar discloses that the invention relates to a computer program (Col. 1, line 19), and that patient data is stored for later reference (Col. 4: 28-30).

With regard to claim 13, and the limitation of a data processing station coupled to a first database, Goknar discloses a clinician entering data into the computer. (Col. 2: 47-53). With regard to the limitation of the database containing a plurality of comparative profiles for previous patients and allocation of training programs prescribed based on the comparative profiles, see the above rejection to claim 1. With regard to the limitation of a module for automatically comparing a capability profile for the patient with the comparative capability profiles for comparative patients and for selecting and displaying from the first database at least one training program for which the associated comparative capability profile matches the patient's capability profile to a prescribable degree of similarity, Goknar discloses comparing data of a current patient with data from a previous patient and selecting a treatment option based on the comparison (Col. 2: 61-63; see also Fig. 1A; see also claim 1).

With regard to claim 26, the limitation of providing a capability profile for a patient is addressed above in the rejection to claim 1. The limitation of a database containing comparative profiles for previous patients and allocation of training programs based on the comparative profiles is addressed above in the rejection to claim 1. With regard to the limitation of comparing the patient's capability profile with the comparative capability profiles, and displaying at least one training program associated with a comparative capability profile resembling the patient's capability profile, see the above rejection to claim 1.

With regard to claim 28, and the limitation of comparing and displaying being performed automatically at a data processing station, Goknar discloses that the computer will perform the calculations according to algorithms, and compare and match the data to various treatment options to select the treatment options most nearly fitting the psychological profile of the patient. The selected treatment option is displayed on an Input/Out device (Col. 4: 5-13).

With regard to claim 36, and the limitation of a data processing station coupled to a database containing a plurality of past comparative profiles for comparative patients with an allocation of training programs respectively prescribed based on the comparative capability profiles, see the above rejection to claim 13. With regard to the limitation of a means for automatically comparing a capability profile for the patient with the comparative capability profiles, Goknar discloses comparing data from a current patient with data from a previous patient in order to select a treatment option

(See claim1). Goknar also discloses that a computer will perform the calculations according to algorithms (Col. 4: 5-7). Goknar additionally discloses providing the system of psychometric analysis and diagnosis on a display device (Col. 2: 39-43). With regard to the limitation of a means for displaying at least one training program, Goknar discloses, displaying a treatment option (Col. 4: 11-13).

With regard to claim 37, and the limitation of a data processing station coupled to a database containing a plurality of past comparative capability profiles for comparative patients with an allocation of training programs respectively prescribed based on the comparative capability profiles, see the above rejection to claim 13. With regard to the limitation of a module of the system automatically comparing a capability profile for the patient with the comparative capability profile, see the above rejection to claim 13. With regard to the limitation of selecting and displaying at least one training program for which the associated comparative capability profile matches the patient's capability profile to a prescribable degree or similarity, see the above to claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 14, 15, 29, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar in view of Joao (US 5,961,332).

With regard to claim 2, 15, 29, 32 and 35, Goknar discloses displaying the selected treatment plan on an Input/Output device (Col. 2, line 64). Goknar also discloses comparing data from the current patient with data from a previous patient and selecting and displaying a treatment based on known treatments for previous patients with similar data profiles (Col. 2: 61-62; Col. 9: 13-15). Goknar does not disclose the limitation of training programs in the first database including measured values for the success of treatment in the comparative patient. Joao teaches storage and generation of reports containing data relating to the success of a treatment program (Col. 7: 29-50; Col. 8: 1-17; Col. 9: 10-19; Col. 37: 33-46). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Joao into the invention of Goknar in order to provide a treatment selection method which includes not only comparison of current and previous patient profile, but also measured values of the success of previous patients as criteria in selecting a treatment plan for a current patient.

With regard to claim 14, Goknar discloses storing the data of previous patient profiles (Fig. 1A). Goknar also discloses storage of current patient data in a database (Col. 3: 56-67). Goknar does not disclose storage of the current patient data in a separate

database from the one that contains previous patient data. Joao teaches the usage of a plurality of databases of patient profiles (Col. 3:47-60). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Joao into the invention of Goknar in order to provide a more robust system. Having separate databases would be useful in case one got corrupted.

4. Claims 3, 4, 5, 8, 16-18, 21, 27, 30, 31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar in view of Luciano (US 6,063,028).

With regard to claims 3, 16, 30 and 33, Goknar does not disclose displaying a plurality of training programs in an order of size of the associated values for success of the treatment. Luciano teaches selecting a treatment from a group of possible treatments (Col. 1: 9-15). Luciano also teaches a database of predicted outcomes corresponding to different treatment options, which the physician uses to select the treatment with the most desirable results (Col. 7: 4-7). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Luciano into the invention of Goknar in order to provide a treatment program in which the user may select a treatment from several different options, based on the levels of expected success associated with each option.

With regard to claims 4, 17, 27, 31 and 34, Goknar discloses that data from the current patient is compared and matched to various treatment options to select the treatment options most appropriate for the patient, based on his or her psychological (Col. 4: 8-10; Col. 7: 38-40). Goknar also discloses that the evaluated data may then be

compared against known treatments for similar data profiles and a treatment is selected for the patient and displayed (Col. 9: 13-16). Goknar does not disclose that a plurality of treatment programs is displayed in order of degree of similarity between the associated comparative profiles and the current patient's profile. Luciano teaches a treatment selection phase in which an Outcome Predictor provides a database of predicted outcomes in response to multiple treatments (Fig. 2; Col. 7:1-13). Luciano also teaches the simultaneous display of a plurality of treatment options, labeled DMI and CBT, along with data describing their effects on the patient (Figs. 3-12, 3-13, 3-14A-B; Col. 23:16-48). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Luciano into the invention of Goknar in order to allow a physician to view different treatment options side by side, along with data describing their effects in order to select the best possible treatment option.

With regard to claims 5 and 18, Goknar discloses comparing the data of the current patient with the data of the at least one previous patient (See claim 1), and displaying the treatment option in a computerized embodiment (Col. 4: 10-11). Goknar discloses the display of only one treatment option, after it has been determined to be the best option (Col. 4: 8-13). Goknar does not disclose displaying the measured value of success for the treatment option selected. Luciano teaches the display of treatment options along with measured values of success, with respect to different parameters pertaining to the patient in Fig. 3-12. It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Luciano into the

invention of Goknar in order to allow a physician to view the most appropriate treatment option, along with numerical representation of the option's success. A system in which a doctor may view the measured values of success of a treatment option, and not just the treatment option by itself, would give the doctor a clearer picture of how the treatment option might affect the patient.

With regard to claims 8 and 21, Goknar discloses data for a patient comprising a list of evaluative indicators (Col. 9: 13-16), such as function, cognition, behavior, and memory, along with others (Col. 3:9-15). Goknar does not disclose using further data for comparison of a current patient and a previous patient. Luciano discloses additional evaluative indicators such as work, anxiety, mood and energy (Fig. 3-12). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the additional indicators of Luciano into the invention of Goknar in order to provide more comprehensive evaluation.

With regard to claims 10 and 23, and the limitation of repeatedly providing a capability profile for the patient in the course of therapy, Goknar discloses displaying subsequent evaluations data concurrently with previous evaluation data in order to gauge the improvement or deterioration of the patient (Col. 4: 17-20). With regard to the limitation of the data processing station automatically comparing the patient's current capability profile with the comparative capability profile and selecting one further training program, Goknar discloses using a score as part of the evaluation, and determine further treatment options based on the score (Col. 9: 13-20). With regard to

the limitation of displaying a training program and a capability profile, see the above rejection to claim 2. Goknar does not disclose displaying measured values of success for a treatment option. Luciano teaches this feature, as described above in the rejections to claims 5 and 18.

5. Claims 11 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar in view of Luciano, as described above, and further in view of Joao. Goknar and Luciano do not disclose do not disclose a third database containing transfer measures between different training programs. Joao teaches implementation of a Random Access Memory Device, which is used for storage or patient data, as well as the data utilized in the processing of patient data (Col. 3: 30-35). Joao also teaches a memory or storage bank employed for storing and maintaining databases of patient profiles (Col. 3: 47-60). With regard to the limitation of a data processing station automatically retrieving and outputting transfer measures by reverting to a third database, Joao teaches a CPU (item 1 in Fig. 15) connected to a databank, ROM device, and RAM device. Joao teaches that the CPU is utilized for performing calculations and various processing routines related to the invention (Col. 3: 5-26). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of Joao into the invention of Goknar in order to provide for a more efficient and automated system of maintaining patient profiles.

6. Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar in view of McCallum (US 5,784,635). Goknar discloses storing patient data in a

computer memory (Col. 2: 43-44). Goknar does not disclose a database containing anonymized patient data. McCallum discloses anonymizing patient data before generating reports for other users to view (Col. 5: 45-67; Col. 8:23-35). It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate the teaching of McCallum into the invention of Goknar in order to create data that is "patient-blind", and thus viewable by users other than the patient's doctor.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua D. Crabtree whose telephone number is 571-272-8962. The examiner can normally be reached on 8:00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDC


KATHLEEN MOSSER
PRIMARY EXAMINER